

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Certificates of
Authority of American Family Mutual
Insurance Company, American Standard
Insurance Company of Wisconsin,
American Family Life Insurance
Company, Wisconsin corporations, doing
business in the State of Minnesota

**DISCOVERY AND
PROTECTIVE ORDER**

On January 22, 1997, the Respondents ("American Family") filed a Motion for a Protective Order which limit or preclude the discovery served by the Department on January 8, 1997. On January 29, 1997, the Department of Commerce filed a Memorandum of Law in Opposition to the Motion. The motion was the subject of oral argument during a telephone conference on January 30, 1997.

The Respondents are represented by Cory J. Ayling, Esq., and Kathleen M. Brennan, Esq. of the firm of McGrann, Shea, Franzen, Carnival, Straughn & Lamb, 2200 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2041. The staff of the Department of Commerce was represented by Joan Peterson, Assistant Attorney General, Michael Sindt, Assistant Attorney General, and Gregory Gisvold, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

Based upon the filings by the parties, and the oral argument during the telephone conference, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that:

1. The Respondents shall produce Jack Chop for an oral deposition not to exceed three hours in length.
2. The Respondents shall produce documents prepared for Respondents by the group that studied its agent commission and expenses. This information shall be treated as a trade secret under Minn. Rule pt. 1400.6700, subp. 4, and shall not be disclosed to anyone other than the Department's staff and counsel, and shall not be disclosed to Mr. Kemp or Ms. McClure.
3. The Respondents shall produce minutes and agendas for meetings of officers and cabinet meetings from January 1, 1995, to April 1, 1996. Financial data need not be provided. This information shall be treated as a trade secret and shall not be disclosed to anyone other than the Department's staff and counsel and shall not be disclosed to Mr. Kemp or Ms. McClure.

4. The Respondents shall produce the documents in the possession of Himle Horner which relate to the termination of Mr. Kemp or Ms. McClure. This information shall be treated as a trade secret and shall not be disclosed to anyone other than the Department's staff and counsel and shall not be disclosed to Mr. Kemp or Ms. McClure.

5. The Respondents shall produce the calendars, date books and appointment logs for Rizzolo, Spencer, Eldridge, Meyer and DeSalvo for July 1, 1995, to April 1, 1996. This information shall be treated as a trade secret and shall not be disclosed to anyone other than the Department's staff and counsel and shall not be disclosed to Mr. Kemp or Ms. McClure.

6. The Respondent shall produce to Administrative Law Judge Steve Mihalchick on or before noon on February 5, 1997, a copy of the personal diary of Gary Hammer for calendar year 1995 for an *in camera* inspection.

7. The Respondents shall produce the notes, records, logs or other documents from the Regional Vice Presidents meeting in November 1995. This material shall be treated as a trade secret and not disclosed to Mr. Kemp or Ms. McClure or others.

8. All written discovery ordered to be produced shall be produced on or before 4:30 p.m. on February 10, 1997. February 12, 1997, shall be the deadline for discovery in this case.

9. The following dates are added to the hearing schedule, if necessary: February 24-26, 1997.

10. The deadline for submission of final witness lists, trial briefs and the stipulation of facts and conclusions is extended to February 13, 1997, at noon.

Dated this _____ day of _____ 1997.

GEORGE A. BECK
Administrative Law Judge

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MEMORANDUM

Discovery in an administrative contested case proceedings is governed by Minn. Rule pt. 1400.6700, subp. 2. Upon objection to discovery, the party seeking discovery has the burden of showing that the discovery is needed for the proper presentation of its case, that it is not for the purposes of delay, and that the issues or amounts in controversy are significant enough to warrant the discovery. Generally, evidence is relevant if it would logically tend to prove or disprove a material fact in issue. *Boland v. Morrill*, 270 Minn. 86, 132 N.W.2d 711, 719 (1965). Under Minn.R.Civ.P. 26.02(a), it not grounds for objection to discovery that the information sought will inadmissible at trial if

that information is reasonably calculated to lead to the discovery of admissible evidence. Civil discovery rules in District Court are usually liberally construed. *Baskerville v. Baskerville*, 75 N.W.2d 762, 769 (1956). Under the Administrative rule, discovery can be limited on the appropriate grounds. The tribunal normally has discretion to craft an order necessary to prevent abuse of the process while still allowing discovery. *Thermorama, Inc. v. Shiller*, 135 N.W.2d 43, 46 (Minn. 1965); see also Minn.R.Civ.P. 26.03.

The first discovery matter objected to by the Respondents was the proposed deposition of company president Pierce. The parties were able to resolve this matter themselves and the deposition of Mr. Pierce was completed in three hours.

Respondents object to the proposed deposition of Jack Chop, who is a district manager in Missouri. The Respondents argue that Mr. Chop had nothing to do with the Kemp and McClure terminations and his testimony would therefore be irrelevant. Mr. Chop was vice president of Marketing for the Respondents for a period of time. In that capacity, he had contact with Gary Hammer, the Minnesota State Director concerning the activities of the Minnesota agents association. The Department asserts that this subject is relevant to its allegation that the Respondents coerced its agents in violation of Minn. Stat. § 72A.20, subds. 4 and 18(b). (First Amended Notice of and Order for Hearing, ¶¶ 24-27 and 39-42). American Family concedes that it did attempt to "coerce" its agents in the sense of deterring certain actions, but argues that its activity was not illegal. It argues that the issue is at best peripheral and will unnecessarily extend the hearing time. However, the proposed subject matter of the deposition may have some relevance to the paragraphs cited above even though it does not appear to be possible to determine whether any coercive activities were contrary to law until it is determined whether or not the terminations were contrary to law. Since the proposed area of inquiry is fairly limited, it is appropriate to limit the deposition to a period of three hours. At this point prior to the hearing, a deposition may be accomplished more quickly than answers to interrogatories. The Department has shown the discovery to be necessary.

The Respondents also seek an order prohibiting the production of documents prepared for the Respondents by a group that studied agent commissions and expenses. The Respondents assert that this is irrelevant to the issues in this case. The study apparently recommended a reduction in commissions for agents and the study was the subject of activity by the agents association. The documents are conceivably relevant to the relationship between the Respondents and the agents association. As such, it may be relevant to the coercion claim. It is, however, appropriate, as the Respondents request, that this information be treated as a trade secret and not disclosed to Mr. Kemp or Ms. McClure.

The Department seeks discovery of all notes, minutes, agendas and documents distributed at officers' meetings and cabinet meetings since January 1, 1994. The Respondents object both to the relevance of the documents and to the lengthy time period for which the documents are requested. The request is justified, but unnecessarily broad. It is directed that the Respondents produce minutes and agendas for the meetings in question from January 1, 1995, to April 1, 1996. The Respondents need not produce any financial data which might be included in those materials. The materials should be treated as trade secrets.

The Department has requested documents relating to this case in the possession of American Family's public relations consultant. The Respondents argue that what occurred after the termination in January of 1996 is not relevant and is in the nature of work product. The Department asserts that there may be some pretermination material involved, but also argues that interviews or notes in the possession of the public relations consultant may be relevant to the coercion issue. The Department agrees that any privileged material may be summarized in a privilege log. The Department has demonstrated need and relevance. The request is narrowed to material related to the termination. Again, it is appropriate to treat this matter as a trade secret and not disclose it to Mr. Kemp or Ms. McClure.

The Respondents object to the request for calendars, date books, appointment logs of employees Rizzolo, Spencer, Eldridge, Meyer & DeSalvo. The Respondent has produced the materials for Rizzolo and Dooley. Spencer and Eldridge are in-house counsel for the Respondents. Myer is a vice president who heard an appeal of the termination on paper. The request is justified, but is again overly broad. The time period is limited to July 1, 1995, to April 1, 1996. The Respondents may redact attorney-client or work product materials and provide a privilege log for the same.

The Department seeks to discover the personal diary of Gary Hammer from January 1, 1994, to the present. Three entries from the diary have been produced by the Respondents. Mr. Hammer's deposition has been taken. The Department argues that Mr. Hammer has been forceful about taking action concerning the agents association and that the diary may contain relevant material. The time period is narrowed to calendar year 1995. It is appropriate to produce this material for an *in camera* inspection by another Administrative Law Judge since it is apparently a personal diary.

Finally, the Respondents object to a request for notes, records, logs, and documents from a Regional Vice Presidents' meeting in November 1995, at which proxy issues were discussed. The Respondents assert that the proxy fight has no relevance to this case. Substantial discovery has already been conducted on this issue, however. The Department contends that the Respondents saw the proxy fight as a part of the disloyal conduct on the part of agents and that it is therefore relevant to the coercion issue. The Department's intent is not to litigate whether or not there were proxy law violations, but rather whether or not agents were unlawfully coerced. The material may be relevant and is of a limited nature. This material is appropriately classified as a trade secret and need not be disclosed to Mr. Kemp or Ms. McClure.

The parties discussed the advisability of a motion for summary judgment or a motion to dismiss during the telephone conference. Submission of such a motion would require a substantial delay in this matter in order to allow time for the ALJ and the Commissioner to consider the motion. The hearing is set to begin on February 18, 1997, and has previously been continued. It appears to be reasonable to proceed with the hearing and develop whatever factual record is necessary and then develop the legal arguments. Since the heart of this case revolves around legal interpretation rather than factual conflicts, counsel have been directed to confer and arrive at a stipulation of facts and conclusions in order to shorten the hearing time. This stipulation is now due February 13, 1997.

G.A.B.